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FILED
Clerk
District Court

APR 19 2016

for the Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

LIEUTENANT COLONEL ROBERT L. GAY, CIVIL CASE NO. 16-_____

Plaintiff,

v.

COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS PUBLIC SCHOOL
SYSTEM and DOES 1-10,

Defendant.

CV 16-00013
COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff LIEUTENANT COLONEL ROBERT L. GAY hereby files this complaint against Defendant COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS PUBLIC SCHOOL SYSTEM on the following grounds:

NATURE OF THE ACTION

1. This is an action under Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991 ("**Title VII**") to correct unlawful employment practices on the basis of race, national origin, and retaliation. As alleged below, Defendant Commonwealth of the Northern Mariana Islands School System ("**PSS**") unlawfully subjected Plaintiff Lieutenant Colonel Robert L. Gay ("**Col. Gay**") to unlawful discrimination based on his race

1 and national origin, thereby creating a hostile work environment. Col. Gay further alleges
2 that PSS retaliated against Col. Gay after Col. Gay complained to the Equal Employment
3 Opportunity Commission (“**EEOC**”) regarding the unlawful discrimination occurring at PSS.

4
5 **JURISDICTION AND VENUE**

6 2. The United States District Court for the Northern Mariana Islands has
7 jurisdiction over this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343, and
8 42 U.S.C. § 2000e-5(f)(1), (3).

9 3. Venue in this Court is proper pursuant to 28 USC § 1391(b)(2) and
10 42 U.S.C. § 2000e-5(f)(3) because the unlawful employment practices were committed in
11 this judicial district.

12
13 **PROCEDURAL PREREQUISITES**

14 4. Col. Gay has satisfied all required procedural conditions prior to instituting
15 this lawsuit.

16 5. On or about March 28, 2014, the EEOC acknowledged receiving a charge
17 of discrimination from Col. Gay, against PSS, based on hostile working environment.

18 6. PSS received notice of the first Charge of Discrimination on April 8, 2014.

19 7. On or about January 29, 2016, the United States Department of Justice
20 issued a Notice of Right to Sue based on the hostile work environment claim which Col.
21 Gay’s attorney received on or about February 19, 2016.

22 8. On or about November 2014, the EEOC acknowledged receiving a charge
23 of discrimination from Col. Gay, against PSS, this time based upon retaliation.

24 9. PSS received notice of the second Charge of Discrimination on November
25 2014.

1 defendants. Col. Gay further alleges that all alleged acts and failures to act were within the
2 scope of each agency and employment relationship and that each of PSS and the DOE
3 defendants participated in, approved, or ratified each of the unlawful acts or omissions
4 alleged in this complaint. Whenever this complaint refers to an act or omission undertaken
5 by PSS, unless specified otherwise, the act or omission will be deemed to be the act or
6 omission of PSS and each of the DOE defendants, acting individually, jointly, and severally.

7 8 **FACTUAL BACKGROUND**

9 18. From February 2007 through February 2012, Col. Gay served as the DAI for
10 the CNMI.

11 19. Col. Gay returned to the CNMI and again served as DAI in October 2012.

12 20. The DAI is in charge of the entire JROTC program within the CNMI.

13 21. The Director of JROTC United States Army Cadet Command ("USACC")
14 confirms all DAIs.

15 22. A DAI must successfully serve for two years as a Senior Army Instructor
16 ("SAI") before the USACC will consider a candidate for a DAI position.

17 23. The governing authorities of a school where a JROTC is established must
18 promise to agree to a policy of nondiscrimination based on race, sex, or national origin,
19 among others, with respect to admission of qualified studies and the treatment of students
20 and instructors.

21 24. In particular, failure to adhere to these policies constitutes a violation of
22 federal United States Army Regulations, USACC regulations, and the contract between
23 USACC and a school system that participates in the JROTC program.

24 25. Col. Gay served as DAI from February 2007 through February 2012 and
25 again from October 2012 through June 2013 without interference by the Board of Education

1 (“**BOE**”), the Chairmain of the BOE, Herman T. Guerrero (“**Chairman Guerrero**”), or the
2 Commissioner of Education, Dr. Rita A. Sablan (“**Commissioner Sablan**”).

3 26. The BOE is a five-member board tasked with formulating policy and
4 exercising control over PSS through the Commissioner of Education.

5 27. The Commissioner of Education is the chief executive officer for PSS and is
6 appointed by the BOE.

7 28. Col. Gay returned to the CNMI in October 2012 to resume his duties as DAI.

8 29. The 8th Brigade, US Army Cadet Command was satisfied with Col. Gay’s
9 performance as DAI from February 2007 through February 2012 and again from October
10 2012 through January 2016.

11 30. Sometime during late July or early August 2013, USACC informed the BOE
12 that USACC was going to put the Rota High School JROTC program on probation because
13 the Rota JROTC program lacked a qualified SAI.

14 31. According to USACC regulations, an SAI must be a commissioned officer
15 with a four-year degree.

16 32. During the 23+ years that the Rota JROTC program has been in existence,
17 the Rota JROTC program never had a qualified commissioned officer with a four-year
18 degree to serve as SAI because Rota program is extremely remote.

19 33. USACC was previously exempted the Rota JROTC program from the SAI
20 requirement, but in or about 2012, the SAI requirement for the Rota JROTC program was
21 initiated.

22 34. Commissioner Sablan, and other members of the BOE, including Chairman
23 Guerrero, told other people that BOE was holding Col. Gay personally responsible because
24 the USACC placed the JROTC program on probation.

1 35. This was a pretext used by the BOE to justify removing Col. Gay from the
2 DAI position in order that an unqualified Chamorro man, Retired Colonel Harry Blanco
3 (“**Col. Blanco**”), could take Col. Gay’s position as DAI.

4 36. In reality, Chairman Guerrero, Commissioner Sablan, the BOE, and other
5 PSS leadership personnel were responsible for the Rota JROTC’s probationary status
6 because their prejudicial conduct and hostility toward non-Chamorros.

7 37. PSS’s efforts to remove Col. Gay from the DAI position began when Col.
8 Blanco told Chairman Guerrero, sometime between September and October of 2013, that
9 Col. Blanco was returning to the CNMI in February 2014.

10 38. Col. Blanco quickly made clear that he wanted to be the DAI for the CNMI
11 JROTC district when he applied for the CNMI DAI position in October 2013, even though
12 Mr. Col. Gay’s DAI contract was not set to expire until October 2014.

13 39. Federal regulations require that, in order to qualify for a DAI position, a
14 person must first serve as an SAI for two years with a high school JROTC program.

15 40. Col. Blanco was not qualified to be a DAI because he never served as SAI
16 for two years as required by federal regulations.

17 41. Col. Blanco did not offer to serve as the SAI on Rota nor did he offer to
18 serve as the SAI for anywhere else, despite being offered a pathway to the DAI position by
19 federal JROTC program coordinators through the USACC 8th Brigade located in Fort
20 Lewis, Washington.

21 42. Col. Blanco’s anticipated return to the CNMI caused Chairman Guerrero,
22 the members of the BOE, Commissioner Sablan, and Commissioner Sablan’s staff
23 members to engage in an increasing amount of harassment, intimidation, and racism
24 directed toward Col. Gay, because Col. Gay is white and not Chamorro, with the purpose of
25

1 causing Col. Gay to leave his DAI position so that Col. Blanco, a Chamorro man, could take
2 Col. Gay's position as DAI.

3 43. During September 2013, Col. Gay met with Commissioner Sablan regarding
4 the fact that the USACC placed the Rota JROTC program on probation.

5 44. During this meeting, Commissioner Sablan yelled at Col. Gay in a
6 denigrating manner.

7 45. During November 2013, Col. Gay met with Commissioner Sablan blaming
8 Col. Gay for the fact that the USACC has placed the Rota JROTC program on probation.

9 46. During that meeting, Commissioner Sablan repeatedly harassed Col. Gay
10 by repeatedly informing Col. Gay that Chairman Guerrero was upset that the USACC
11 placed the Rota JROTC program on probation.

12 47. Commissioner Sablan continued harassing Col. Gay in her attempt to
13 remove Col. Gay as DAI by repeatedly questioning Col. Gay's credential's to serve as the
14 DAI and asking Col. Gay why she needed him and why was he still working for PSS.

15 48. Instead, Commissioner Sablan used the meeting to harass and intimidate
16 Col. Gay and to attempt to force Col. Gay to resign so that Col. Blanco could become the
17 DAI for the CNMI.

18 49. In December 2013, a member of the BOE informed Col. Gay that the new
19 human resources officer was not allowed to speak with Col. Gay unless Commissioner
20 Sablan was present.

21 50. On Friday December 23, 2013, Col. Gay attempted to speak with the human
22 resources officer.

23 51. After Col. Gay waited for over 30 minutes, the human resource officer's
24 clerk told Col. Gay that the human resources officer was too busy to speak with Col. Gay
25 despite the fact that PSS was then on Christmas break.

1 52. Col. Gay's position as the DAI requires him to correspond with the PSS
2 human resources office on a regular basis.

3 53. PSS cannot comply with federal laws and regulations unless PSS human
4 resources offices communicates with Col. Gay and the rest of Col. Gay's office.

5 54. At the beginning of February, 2014, Commissioner Sablan called a meeting
6 in which she stated that she had "made up her mind" and that she was reassigning Col.
7 Gay to the Rota JROTC program for five months.

8 55. This proposed assignment was a breach of Col. Gay's contract with PSS
9 and violated JROTC regulations.

10 56. Commissioner Sablan's assignment would have prevented Col. Gay from
11 fulfilling his DAI responsibilities to the federal government and would have caused immense
12 financial hardship to Col. Gay.

13 57. Commissioner Sablan did not attempt to assign anyone other than Col. Gay
14 to manage the Rota JROTC program.

15 58. Col. Gay confirmed with other PSS leadership officials that no program
16 director has ever been reassigned to Rota for an extended period of time.

17 59. After the February meeting, Commissioner Sablan directed Col. Gay's
18 immediate supervisor, Associate Commissioner of Instructional Services, Jackie Quitugua
19 (Ms. Quitugua), to undermine Col. Gay.

20 60. Ms. Quitugua called and emailed Col. Gay's federal supervisors at the 8th
21 Brigade in Fort Lewis, Washington and questioned them regarding Col. Gay's performance
22 and insinuated that Col. Gay was doing a poor job as the DAI of the CNMI District.

23 61. Ms. Quitugua's phone calls and emails to the 8th Brigade were designed to
24 harass Col. Gay to Col. Gay's federal supervisors in order that Col. Gay be removed from
25 the DAI position.

1 62. Col. Gay reported the conduct of Chairman Guerrero, Commissioner
2 Sablan, Ms. Quitugua, and other PSS leadership to the EEOC on March 23, 2014.

3 63. Immediately after PSS received a copy of Col. Gay's EEOC complaint, PSS
4 leadership, including Chairman Guerrero, Commissioner Sablan, Ms. Quitugua, and others,
5 ceased almost all communication with Col. Gay and Col. Gay's staff.

6 64. The lack of communication was motivated by retaliation because Col. Gay
7 filed an EEOC complaint and made it extremely difficult for Col. Gay to complete his job
8 duties as the DAI for the CNMI.

9 65. In March 2014, Chairman Guerrero, Commissioner Sablan, and other PSS
10 staff further retaliated against Col. Gay by misappropriating thousands of dollars from a
11 special fund set aside for the JROTC program by Commonwealth law, to fund a one-week
12 trip taken by Ms. Quitugua and Col. Blanco to meet with Col. Gay's immediate USACC
13 supervisors at the 8th Brigade, in Fort Lewis, Washington.

14 66. The purpose of the meeting between PSS and USACC was to undermine
15 Col. Gay to Col. Gay's immediate USACC superiors at the 8th Brigade and to convince the
16 USACC to waive the two-year SAI requirement in order that Col. Blanco be permitted to
17 become the DAI for the CNMI.

18 67. In addition, Chairman Guerrero, Commissioner Sablan, and other PSS staff
19 took \$5,000 each month from the JROTC fund in order to hire Col. Blanco as a JROTC
20 consultant based on Col. Blanco's alleged "JROTC expertise."

21 68. Col. Blanco had no JROTC expertise whatsoever prior to the date on which
22 PSS hired him as its "expert" consultant.

23 69. Chairman Guerrero, Commissioner Sablan, and other PSS staff ostensibly
24 hired Col. Blanco to ensure that the CNMI JROTC program complies with federal laws and
25 regulations, which is a core part of Col. Gay's responsibilities as the DAI.

1 70. By hiring Col. Blanco as a consultant, Chairman Guerrero, Commissioner
2 Sablan, and other PSS staff attempted to give Col. Gay's job responsibilities to Col. Blanco.

3 71. When it came time to renew Col. Gay's contract with PSS, PSS failed to
4 follow its own policies regarding the hiring process as a matter of further harassment and
5 retaliation.

6 72. Col. Gay's contract was to expire on October 25, 2014.

7 73. In accordance with PSS regulations, Col. Gay submitted his request for
8 renewal of his contract on April 16, 2014, more than six months prior to the expiration of the
9 contract.

10 74. PSS regulations require that PSS provide notice of intent to renew or not
11 renew a contract at least 90 days prior to the date on which the contract terminates.

12 75. PSS did not provide the required notification.

13 76. PSS failed to provide any performance rating appraisal regarding Col. Gay's
14 performance as DAI from his direct supervisor, Ms. Quitugua at any time during the
15 relevant rating periods until Col. Gay brought PSS's failure to follow its own regulations to
16 PSS human resources personnel.

17 77. Col. Gay did not receive a notice of renewal or non-renewal, nor did Col.
18 Gay receive a new employment contract prior to October 25, 2014, the day on which Col.
19 Gay's contract was set to expire.

20 78. In July 2014, Col. Gay learned that PSS intended to offer Col. Gay a one
21 year contract instead of a two-year contract as a matter of harassment and retaliation.

22 79. PSS regulations require two-year contracts for program managers, including
23 the DAI position.

24 80. All of the other program managers with PSS have received two-year
25 contracts.

1 81. Col. Gay received four inconsistent performance appraisals from PSS, each
2 filed after March 23, 2014, the date on which Col. Gay filed his first EEOC complaint.
3 These performance appraisals demonstrate PSS intention to discriminate and retaliate
4 against Col. Gay.

5 82. Col. Gay received the first performance appraisal on July 1, 2014.

6 83. That appraisal listed five job duties and contained no evaluator comments.

7 84. Col. Gay received his second performance appraisal on July 9, 2014.

8 85. The second appraisal listed 15 job duties and contained no evaluator
9 comments.

10 86. Col. Gay received a third performance appraisal on October 24, 2014, the
11 day before Col. Gay's contract expired.

12 87. That appraisal listed 20 job duties and contained evaluator comments from
13 Col. Gay's immediate supervisor, Ms. Quitugua.

14 88. The evaluator comments made by Ms. Quitugua were extremely negative
15 and comprised numerous false statements that were similar to statements made about Col.
16 Gay by various PSS leadership personnel. These negative statements were motivated by
17 racial animus and retaliation for filing an EEOC charge.

18 89. On October 28, 2014, three days after Col. Gay's contract expired, Col. Gay
19 received a 4th performance appraisal which was emailed to him by one of PSS's human
20 resources officers.

21 90. The final appraisal contained a number of job duties that were different than
22 the job duties in the first through third appraisals.

23 91. The final appraisal also included comments by Ms. Quitugua which, instead
24 of being negative, were now effusive with praise for Col. Gay's performance as DAI.
25

CAUSE OF ACTION I:

HARASSMENT BASED ON RACE

92. Col. Gay realleges and incorporates paragraphs 1-91.

93. Col. Gay is a Caucasian man from the State of Hawaii.

94. Col. Gay served as the DAI for the JROTC program with PSS, without incident, from February 2007, to February 2012, a period of five years.

95. PSS rehired Col. Gay in October 2012, to serve as the DAI for PSS, for a period of two years, through October 2014.

96. Col. Gay served as the DAI, again without incident, until about June 2013.

97. In June 2013, Col. Gay met with Col. Blanco on Saipan.

98. During the meeting with Col. Blanco, Col. Blanco inquired extensively about the CNMI JROTC program, and insinuated that he could have Col. Gay removed or demoted from the DAI position.

99. This conversation led Col. Gay to conclude that Col. Blanco wanted Col. Gay's DAI position and that PSS wanted to remove or demote Col. Gay.

100. In October 2013, Col. Gay learned that PSS allowed Col. Blanco, a Chamorro man, to apply for Col. Gay's DAI position, even though the position was not open, and even though Col. Blanco was unqualified to serve as the DAI for the CNMI.

101. PSS allowed Col. Blanco to skirt the normal application process and submit his application to Chairman Guerrero.

102. Thereafter, PSS, through Chairman Guerrero, various members of the BOE, Commissioner Sablan, Col. Gay's direct supervisor Ms. Quitugua, and various other employees of PSS, engaged in a campaign of harassment designed to force Col. Gay to resign from his position as a DAI in order to enable Col. Blanco to become the DAI for the CNMI.

1 103. The harassment, which began in June 2013, continued on, even after Col.
2 Gay's contract expired in October 2014.

3 104. Each of these incidents was unwelcome because Col. Gay did not initiate
4 any of the complained of conduct perpetrated by Chairman Guerrero, Commissioner
5 Sablan, the BOE, and other BOE staff, including Ms. Quitugua and because Col. Gay
6 regarded the conduct as offensive and racially motivated.

7 105. During and after September 2013, the conduct of Chairman Guerrero,
8 Commissioner Sablan, the BOE, and other BOE staff, including Ms. Quitugua was
9 sufficiently severe and pervasive so as to alter the conditions of Col. Gay's employment
10 with PSS by creating a work environment that was hostile to Col. Gay because Col. Gay
11 was Caucasian and not Chamorro.

12 106. As a result of the actions undertaken by Chairman Guerrero, Commissioner
13 Sablan, the BOE, and other BOE staff, including Ms. Quitugua, Col. Gay felt uncomfortable
14 each day that he provided services to PSS, Col. Gay's ability to perform his services as the
15 DAI was impaired, and Col. Gay's reputation suffered, both at PSS, and with Col. Gay's
16 federal supervisors with the USACC.

17 107. In addition, the actions undertaken by Chairman Guerrero, Commissioner
18 Sablan, the BOE, and other BOE staff, including Ms. Quitugua, aggravated and
19 exacerbated Col. Gay's preexisting PTSD condition which caused Col. Gay extreme
20 emotional distress.

21 108. As a result, Col. Gay sought medical treatment for his PTSD, treatment that
22 would have been unnecessary but-for the hostile work environment created by PSS
23 leadership.

24 109. Col. Gay perceived the working environment at PSS to be hostile.
25

1 110. A reasonable man in Col. Gay's position would have considered the Col.
2 Gay's working environment to be hostile.

3 111. PSS intentionally created the hostile work environment in order to ensure
4 that Col. Gay knew that Col. Gay was no longer welcome at PSS, and to force Col. Gay to
5 resign from the DAI position so that the position could be given to Col. Blanco, a Chamorro
6 man.

7 112. PSS created the hostile work environment with malice, or alternatively, with
8 reckless indifference for Col. Gay's federally protected rights.

9 113. As a result of actions taken by Chairman Guerrero, Commissioner Sablan,
10 the BOE, and other BOE staff, including Ms. Quitugua, Col. Gay suffered irreparable
11 injuries, including but not limited to emotional distress, medical expenses, and other
12 damages for which PSS should compensate Col. Gay.

13 **CAUSE OF ACTION II:**

14 **RETALIATION**

15 114. Col. Gay realleges and incorporates paragraphs 1-113.

16 115. Col. Gay engaged in activity protected by Title VII when he filed an intake
17 questionnaire with the EEOC on March 10, 2014, alleging that PSS, particularly Chairman
18 Guerrero, Commissioner Sablan, the BOE, and other BOE staff, including Ms. Quitugua
19 particularly were discriminating against Col. Gay based upon Col. Gay's race and national
20 origin and asking that the EEOC take action against PSS.

21 116. Because PSS received a *Howecki* notice of Col. Gay's EEOC claim on April
22 8, 2014, PSS was aware of Col. Gay's claims after that date.

23 117. Starting after April 8, 2014, the date on which PSS received notice of Col.
24 Gay's charge of discrimination, PSS ceased all communication with Col. Gay's staff.
25

1 118. In particular, Chairman Guerrero, Commissioner Sablan, the BOE, and
2 other BOE staff including Ms. Quitugua, PSS human resources, and other PSS employees.

3 119. This lack of communication made Col. Gay's job substantially more difficult.

4 120. PSS paid Col. Blanco in order that Col. Blanco take over a part of Col.
5 Gay's DAI job responsibilities, in violation of federal law.

6 121. In order to further retaliate against Col. Gay, Chairman Guerrero,
7 Commissioner Sablan, Ms. Quitugua, and other PSS employees fraudulently
8 misappropriated \$5,000.00 per month from the JROTC account in order to pay Col. Blanco
9 for expertise that Col. Blanco does not possess.

10 122. As further retaliation against Col. Gay, PSS leadership, including Ms.
11 Quitugua, threatened Col. Gay's employees by informing them that they were doing a bad
12 job and that they would be immediately reassigned to other PSS programs throughout the
13 Commonwealth.

14 123. In reality, these employees were performing in an exceptional manner.

15 124. PSS further refused to honor its own rules regarding non-certified hirings.

16 125. In particular, PSS failed to notify Col. Gay of PSS's intention to renew or not
17 renew his employment contract.

18 126. PSS did not provide Col. Gay with appropriate performance appraisals, nor
19 did Ms. Quitugua ever discuss Col. Gay's duties, responsibilities, standards, or
20 accomplishments at any time during Col. Gay's 2-year contract.

21 127. Although PSS did eventually provide Col. Gay with four performance
22 appraisals, two appraisals contained no substantive evaluations, the third appraisal
23 contained false statements, and the fourth performance appraisal, delivered October 28,
24 2014, contained statements which indicate that the statements in the third performance
25 appraisal were false statements.

1 128. Col. Gay's last day of work under contract was to be October 25, 2014.

2 129. Col. Gay continued to work for PSS even though PSS did not provide him
3 with a new employment contract.

4 130. While Col. Gay was employed by PSS, all other program managers whose
5 employment contracts expired received two-year renewal contracts, except for Col. Gay.

6 131. As a result of PSS retaliation, Col. Gay suffered injuries, including but not
7 limited to emotional distress, a worsening of his PTSD condition, medical expenses, loss of
8 pay, loss of benefits, and other damages for which Col. Gay should be compensated.

9
10 **DEMAND FOR JURY TRIAL**

11 Col. Gay demands a jury trial on all issues triable before a jury.

12
13 **PRAYER FOR RELIEF**

14 Plaintiff Col. Gay respectfully requests that the Court:

- 15 • Order PSS to pay Col. Gay an appropriate amount of back pay with prejudgment
16 interest plus an appropriate amount of front pay, in amounts to be determined at
17 trial;
- 18 • Order PSS to pay for any medical expenses that Col. Gay incurred as a result of the
19 hostile work environment created by PSS;
- 20 • Order PSS to pay compensatory damages for Col. Gay's future pecuniary losses,
21 including medical expenses, plus non-pecuniary losses, including emotional pain,
22 suffering, inconvenience, mental anguish, and loss of enjoyment of life;
- 23 • Order PSS to pay punitive damages for engaging in discriminatory practices with
24 malice or reckless indifference to Col. Gay's federally protected rights;
- 25

- Order PSS to pay Col. Gay's reasonable attorney's fees and costs incurred to bring this suit; and
- Award any other relief to Col. Gay that the Court deems just and proper

Dated this 19th day of April, 2016.

/s/ Colin M. Thompson
COLIN M. THOMPSON
Thompson Law Office, LLC
Attorney for Plaintiff, Col. Robert L. Gay